IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12084 of 2004

Between:

N.Kishore Babu, s/o N.Sivarama Krishnaiah,
r/o D.No.66 Ward No.25, Siriguppa Road, Havambavi Bellary,

Temporarily r/at Plot no.47, B.N.Reddy Colony,
Road No.14, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 The Chief Engineer (R&B) National High Ways, A.P., Hyderabad.
2 The Executive Engineer (R&B), N.H.Division, No.I, Hyderabad,
1st Floor (R&B) Building Complex, Mahaveer Marg, A.C.Guards,

Hyderabad.
3 The Inspector General of Registration and Stamps, A.P.,

Hyderabad.
4 The District Registrar, Medak District at Sangareddy.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of mandamus declaring the action of the respondents in treating the work i.e., sale of lease hold rights for collection of Toll fee on Minor Bridge at KM.502/4 of Pune-Hyderabad Road NH-9 near Rudraram Village of Medak District in A.P., for the years 2004-2005 and 2005-2006 i.e., from 1-4-2004 to 31-3-2006 (two years) as lease and demanding stamp duty is illegal and arbitrary, and without authority and consequently declare that the nature of the contract (Toll gate) is only a "licence" but not lease and direct the respondents to refund the amount already paid by the petitioner towards stamp duty

Counsel for the Petitioner:MR.KOWTURU VINAYA KUMAR

Counsel for the Respondent No.: GP FOR ROADS & BUILDINGS

The Court made the following :

ORAL ORDER:

In this writ petition, the petitioner is the successful bidder for the leasehold rights for collection of toll fee on Minor Bridge at KM.502/4 of Pune-Hyderabad road NH-9, near Rudraram village of Medak district for the years 2004-05 and 2005-06.

2. According to the petitioner, as per the terms of the contract, he has executed a document, but, however, the respondents seek to levy stamp duty at 5% instead of 3%, as stipulated in the conditions of the contract.

3. The learned counsel for the petitioner also contends that the document that was executed by the petitioner in favour of the respondents is not liable to be registered, as, according to him, it is not a lease deed, but is only a license. Therefore, the learned counsel sought for appropriate directions to the respondents.

4. At the time of hearing, the learned Government Pleader stated that with reference to the same dispute for the same year and with reference to the same document, the petitioner earlier filed a Writ Petition i.e., W.P.No.5193 of 2004 claiming that the petitioner is liable to pay only 3%, instead of 5% as claimed, and that this Court disposed of the said Writ Petition directing the respondents to refer the dispute to the registering authority for adjudication. But, however, in the present writ, the petitioner sought to contend that the document is not liable to be registered and the petitioner is not liable to pay any stamp duty, as the document that was executed is not a lease deed, but only a document evidencing the grant of license in favour of the petitioner for collection of toll fee.

5. Heard the learned counsel for the petitioner and the learned Government Pleader and considered the material on record.

6. As the petitioner has filed the above-mentioned Writ Petition earlier in respect of the very same transaction where the petitioner has fairly conceded that the document is liable to be registered and the stamp duty is also required to be paid, may be perhaps in the light of the Judgment of this Court in ***Uppalapati Durga Prasad v. Executive Engineer (R&B), N.H. Division, Srikakulam***. Having conceded the position that the document in question is liable to be registered, it is not open to the petitioner to turn out and contend that the document is only a deed evidencing license and not a lease deed, and therefore, it does not require any

registration and stamp duty. It is not open to the petitioner to raise such contention in the present Writ Petition, having conceded the position in the earlier writ petition, as the same will operate as *res judicata*.

7. In view of the above, the Writ Petition is devoid of any merit and the same is accordingly dismissed.

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S.Ananda Reddy,J.

Dt. 15.07.2004

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To

1. The Chief Engineer (R&B) National Highways, A.P., Hyderabad.
2. The Executive Engineer (R&B), NH Division No.1, Hyderabad, 1st Floor (R&B) Building Complex, Mahaveer Marg, A.C. Guards, Hyderabad.
3. The Inspector General of Registration and Stamps, A.P., Hyderabad.
4. The District Registrar, Medak district, at Sangareddy.
5. Two CCs. To the G.P. for R & B, High Court of A.P., Hyderabad (OUT)
6. Two CD Copies.

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THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 12084 of 2004

ORAL ORDER

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